

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7594 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA  
and  
MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
AMRATLAL MANDAS KATARIA

Versus

STATE OF GUJARAT  
-----

Appearance:

MR SV RAJU for Petitioners  
MR KAMAL MEHTA for Res.No.2  
MR PG DESAI GP for Respondent No.1 & 3

-----

CORAM : MR.JUSTICE M.R.CALLA and  
MISS JUSTICE R.M.DOSHIT  
Date of decision: 09/10/98

ORAL JUDGEMENT ( PER : CALLA J )

Heard learned counsel. The petitioners seek to set aside the Notification issued under sections 4 and 6 of the Land Acquisition Act annexed with the Special Civil Application as Annexures "P" & "Q" with regard to the alignment for canals of Mukteshwar Irrigation Scheme. The petitioners have come with the case that in Banaskantha District, on river Sarasvati at Mukteshwar, the respondents had decided to built two canals being Left Bank Main Canal and Right Bank Main Canal. The said two canals were proposed to be built from Mukteshwar Dam Site. For this purpose, with regard to the Left Bank Canal, detailed survey was carried out by the officers of the State Government between the years 1985 and 1988. At the time when the survey, as aforesaid, was taken, according to the petitioners, various alternatives were taken into consideration and ultimately it was decided that most technically feasible and economically best alignment should be adhered to and accordingly it was decided to built Left Bank Main Canal as the same was most technically feasible and economically best alignment. The alignment is shown in the map which is annexed at Annexure-A to the petition. The learned counsel for the petitioners has placed reliance on the office order No. 16/89 passed by the Superintending Engineer, Palanpur Irigation Project Circle, addressed to the Executive Engineer, Mukteshwar Project Head Works, copy of which has been annexed as Annexure-B to the petition to show that this alignment was most technically feasible and economically best. The acquisition proceedings appear to have been started somewhere in 1988 for acquiring the lands for the alignment as aforesaid, as was proposed in relation to two villages viz. Juni Sendhani and New Sendhani. It is also the case of the petitioners that for this Project, tenders were floated by the State Government for construction including digging etc. for the Left Bank Main Canal. The contract was awarded to Shri Amrut L. Patel vide the letter dated 27th March, 1991 by the Executive Engineer, Mukteshwar Head Works, Palanpur. The petitioners have alleged that the work in relation to this Project could not be carried out because the possession of the land could not be obtained as the lands belong to the influential persons. It has been alleged in para 4 (9) of the petition, that rich and influential farmers not only did not hand over possession of their lands, but also started exerting political pressure including pressure from Shri A.N.Maulvi, the then Chairman of Gujarat Minority Board, Gandhinagar, and as a result of the said political pressure, despite the fact that the original path was

most economical and technically feasible, was decided to be changed. It has been further alleged that on account of the influence exerted by Shri A.N.Maulvi, the then Minister for Finance Shri Chhabildas Mehta took interest in the matter and it was on this basis that the original path of the Left Bank Main Canal was shelved. Reference has been made to a letter dated 20th February, 1993, sent by the Deputy Secretary, Irrigation Project No.2, Narmada and Water Resources Department to the Superintending Engineer pointing out that the path of the original Left Bank Main Canal was changed on account of the fact that there is opposition from the persons through whose lands the said canal was passing. In para-5, it has been averred that the petitioners and others have filed Regular Civil Suit No. 327/94 in the Court of the Civil Judge (SD) Palanpur, although the plaintiffs included the petitioners who were not the affected parties in the sense that their land was not sought to be acquired. The said suit was filed in the representative capacity. In the said suit, stay order was passed, but the question of jurisdiction was raised by the respondent-State by filing Special Civil Application No.2826/98 and the Division Bench of this court by its order dated 2nd July, 1998, relying upon the judgment of the Supreme Court, reported in AIR 1996, SC, 523, held that the civil court is devoid of jurisdiction and the only right of an aggrieved party was to approach the Constitutional court i.e. High Court, and the High Court thus decided that the civil court had no jurisdiction. It has been then alleged that the Notification under section-4 was issued on 27th May, 1994 i.e. Annexure-P, and the Notification under section 6 of the Act was issued on 21st December, 1996 i.e. Annexure-Q, and through these Notifications, another land is sought to be acquired for the purpose of Left Bank Canal and the petitioners are aggrieved against these Notifications. The basic grievance which has been raised in the petition is that it is on account of political pressure that the originally selected land is not acquired, and the other set of land is sought to be acquired through the Notifications at Annexures "P" & "Q", and this land which is now sought to be acquired through Annexures "P" & "Q" includes the lands of some of the petitioners. Whereas, the allegations of malafides have been levelled, the notice was issued in this petition on 17th September, 1998, in response thereto, an affidavit in reply dated 21st September, 1998, has been filed on behalf of the respondent no.1, to which the affidavit in rejoinder dated 8th October, 1998 has been filed. However, not a single so called rich or influential farmer has been named whose land is sought to be shelved on account of the change.

We have heard learned counsel for the petitioners and the learned Government Pleader. So far as the allegations of malafides are concerned, the same have been denied in totality in the reply which has been filed on behalf of the respondents. It may be mentioned that except Shri A.N.Maulvi, no individual has been impleaded as a party-respondent. So far as Shri Maulvi is concerned, the only allegation is that he as a Chairman of the Minority Cell, had made a representation and it has been then said that political pressure was exerted. Such bald allegations can not establish the malafides. If Shri Maulvi was the Chairman of the Minority Cell and he has made some representation and on that representation if the Government passed an order to examine the matter and explore more alternatives it can not be said that it was on account of any political pressure that there was a change in the decision. Nothing has been pointed out that at the relevant point of time when the decision was taken to effect the change, who was the person in power or charge who took the decision. In any case, we do not find that there is any cogent material to hold that the action is malafide. In the affidavit in reply, which has been filed on behalf of the respondent-State, it has been categorically stated in para-37 that the original alignment was approved after carrying out some alternative studies and after the representation by the farmers and Shri A.N.Maulvi, the then Chairman of the Gujarat Minority Cell, made before the Irrigation Minister, and as per the instructions of the Irrigation Minister, further alternative studies were carried out and after the visit of the Chief Engineer (IP), some more alternative alignments were studied resulting in the approval of the original alignment, first alternative and second alternative (approved alignment). Thereafter the comparison of all these three sanctioned alignments was made and it was seen that the second alternative and approved alignment is most technically feasible. It has been denied that the land in question is not suitable for the purpose of Left Bank Main Canal. It has been further stated in para-38 of this affidavit in reply dated 21st September, 1998, that as per the original proposal, the alignment was passing through the fertile irrigated land, whereas the new approved alignment is passing through the less fertile private and uneven land and Government waste land. It has been denied that the land through which original alignment of left Bank Main Canal passes through, is much well suited than the present land, as alleged. In para-39, it has been stated that original and now approved alignments pass through the villages of old and

new Sendhani, no religious buildings, grave-yards and the like are affected by the finally approved alignment as per the verification from the revenue records. Our attention was also invited to the letter dated 10th January, 1994, sent to the Executive Engineer, Dharoi Main Dam Department, Dharoi Colony by the District Agricultural Officer of the District Panchayat, Banaskantha District, Palanpur, who has visited the spot in presence of the concerned officers of the Agricultural Department, and it has been clearly opined that the land which was recovered in the earlier alignment was more fertile and from all angles the final alignment which has been now approved was preferable in comparison to the earlier alignment. The learned counsel for the petitioners laid stress on the contention raised in para-51 of the affidavit in reply and submitted that the final approved alignment was costlier in comparison to the estimation of the original alignment as per the figures given in this reply itself and therefore also the earlier original alignment should be adhered to. He made a pointed reference to the estimated amount of Rs.4.74 against the Item of land acquisition. In respect of original alignment and the figures of Rs.6.06 relating to the final approved alignment against the item of land acquisition. His contention was that if the land in the original alignment was more fertile, the compensation under the Land Acquisition Act could not be less for a more fertile land in comparison to the land under the finally approved alignment and therefore the contention of the Government that the land under original alignment was more fertile is factually incorrect because this amount which has been mentioned against each item against the final alignment was based on the rates of the year 1991-1992. The learned Government Pleader has explained this anomaly by filing the affidavit dated 9th October, 1998, through which it has been explained that the rates of 1991-1992 for both the Items in para-51 was factually incorrect and that it was only a mistake. It has been pointed out that the amount mentioned against Item of land acquisition with original alignment was based on the rates of the year 1990, whereas the land mentioned against item of land acquisition in respect of the finally approved alignment was for the year 1991-1992. Besides this, it is clear from the copies of the documents at page 173 and 174 with the affidavit in reply that in the land under the original alignment, there are 38 wells in all, out of which, 30 wells are with electric motors and 8 with oil engines, whereas in the land which is approved finally for the alignment, there are only 6 electric oil wells and there are two oil engine wells.

Having heard both the sides and having gone through the affidavits as aforesaid, it can not be said that the action taken by the respondents with regard to the change for the purpose of approving the final alignment is carried out with any malice , nor it can be said that it suffers from any extraneous considerations, nor it can be said that it is after-thought. In a given case, even if the Government proposes to acquire a particular land for a particular purpose, but later on, on re-consideration of the matter, based on explanation of the authorities, may be on the representation of the parties or otherwise, come to the conclusion that the latter alternative was more beneficial and the latter alternative seeks to serve more fertile land from being acquire and thereby the productivity of the crops etc. will be saved and the another land is more suitable, economical and technically feasible, it is always open for the Government to change the decision in this regard and in such matters the parties can not insist that merely because the earlier project for alignment had been approved at one stage, that alone must be given effect to and acted upon. Be that as it may, it is not at all function of this court to sit in judgment as an appellate court over the decision of the Government based on expert opinion as to which land will be more suitable, for which project, and therefore we find that it is hardly a case worth interference by this court under Article 226 of the Constitution of India. We do not find any ground to interfere with the decision of the Government. There is no force in this Special Civil Application. Same is accordingly dismissed. Notice is hereby discharged.

.....

JOSHI